

April 17, 2020

Director, Division of Water and Management, DEP
ATTN: Connie J. Anderson, Permitting Section
601 57th Street SE
Charleston, WV 25304-2345
Connie.J.Anderson@wv.gov



**Re: RAD's Public Comment for Public Notice No.: SD-29-20, General WV/ NPDES
Water Pollution Control Permit No. WV0115924, Appl. No.: WVR109958**

Application for NPDES Permit WVR109958 should not be granted for the reasons listed below:

Waste Capacity Issues

- The City of Charles Town (CoCT) / Charles Town Utility Board (CTUB) has capacity issues currently allowing for 1.75 MGD of waste. The construction of this project would allow for "phase permitting" which will allow for 14,900 MGD from Rockwool initially and later after Rockwool's total buildout of 44,000 MGD.
- These capacity issues will not be addressed by CoCT/CTUB until the year 2030.
- CoCT/CTUB has had ongoing capacity problems for years which has led to numerous violations.

CoCT/CTUB Environmental Violations

- CoCT/CTUB is a repeat offender with violations extending back years and to a most recent violation for exceedents on February 26, 2020.
- It appears the CoCT/CTUB is incapable of operating without incurring environmental violations and therefore should not be allowed to have this registration granted that will further burden their treatment facilities

Detailed Karst Mitigation Plan Not Submitted

- A Generic Karst Mitigation Plan was submitted which was not specific to the site and geography of where construction activities would be occurring.
- An incomplete Groundwater Protection Plan (GPP) was originally submitted to DEP. On February 26, 2020, DEP reviewer David Parsons noted a Karst Mitigation Plan needed to be integrated into the GPP. Permit applicants simply whited out areas of the original GPP & added verbiage from the Generic Karst Mitigation Plan. Again, failing to submit specific site and karst geography plans where construction would be taking place.

- It is well known that several sinkholes have developed in the past near the sewer line route and pump stations. (Attachment A "*County Accepts Bid for Sinkhole Mitigation*", March 7, 2017)
- By the permittee not submitting a detailed Karst Mitigation Plan, reviewers can not see plans to remediate sinkholes specific to the protection of Madison Cave Isopods which are an endangered species to Jefferson County, WV.
- NPDES Permit applicant (WVR108727), Berkeley Business Park in Berkeley County, appears to have a similar timeline for their permit and construction and they submitted a much more detailed and geography specific GPP and Karst Mitigation Plan. Why wasn't the CoCT/CTUB held to similar standards?

Construction Through Wetlands

- The U.S. Fish and Wildlife Service's "National Wetland Inventory" (Attachment B) indicates there are freshwater emergent wetlands where the sewer line construction is occurring; however, this information is not included within the permit application.
- Also not included in Permit WVR109958 is the U.S. Army Corps of Engineers' evaluation of this permit application and the wetlands as required for the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines.

Incomplete Maps and Narrative Description

- Detailed drawings of the entire sewer line route were not submitted. Only three maps consisting of two maps for pump stations and one map of the sewer going under Charles Town Road was submitted.
- This project spans 21.4 acres & is over 5 miles long through karst geography. The public deserves to see detailed drawings of how these construction activities will be carried out showing sensitive karst areas.
- The statement in permit section "18. Narrative Description of the Final Soil Stabilization Techniques" contradicts the EPA's guidelines Erosion and Sediment Controls" (Available at https://www.epa.gov/sites/production/files/2019-05/documents/final_2017_cgpfact_sheet.pdf)

"Project is generally linear in nature. Except for the location of the two pump stations, the entire sewer alignment will be returned to its existing conditions and land cover types, thus no stormwater management is required along the sewer corridor."

Simply stating "entire sewer alignment will be returned to its existing conditions and land cover types" does not detail erosion and sediment controls, length of

time soil is disturbed, pollution controls, drainage maps, how much limits of disturbances (LODs) are, etc. Since detailed maps of the entire sewer line route were not submitted, reviewers have no idea of erosion and sediment controls, pollution controls, and LODs.

Incomplete Information Regarding Wells and Drinking Water

- The CoCT/CTUB failed to include any information in section 47 CSR 58.4.11.5 of their GPP for the following boxes:
 - Known ground water monitoring wells within 2000 feet
 - Known public or private drinking water wells within 2000 feet
 - Closest Well Head Protection Area
 - Closest Source Water Protection Area
- Considering that almost the entirety of the sewer line is within a Source Water Protection Area, and there are large areas within the project vicinity which are considered Well Head Protection Areas, and there are indeed many wells within 2000 feet of construction activities, it seems negligent of CoCT/CTUB to allow their contractor to proceed through this sensitive area. WVDEP should not approve this construction permit until alternative routes are considered.
- Fox Glen Subdivision, North Jefferson Elementary, Walnut Grove Subdivision, and the USDA Facility on Wiltshire Blvd. are considered Well Head Protection Areas as well as the Elks Run which is the source for Harpers Ferry's drinking water.

Construction Activities Commenced Before Public Comment Period Ends

- Public comment was denied to the public on this permit, as the majority of the construction work had already been completed before the permit was released.
- Construction commenced well before the stated March 2, 2020 date as mentioned in permit application. We have photographic evidence from February 21, 2020 showing construction had already commenced by that date.
- During the Unilateral Order #9080 Motion to Stay EQB hearing on April 15, 2020, contractor's lawyer stated that the project was 75% completed.

Public Notice Problems

- The City of Charles Town is the permit registration holder, however the address listed on the public notice is for the Charles Town Utility Board.
- Receiving Streams Issues: Not all of the affected streams are not listed in the public notice. This linear project has three receiving streams including: Elk Branch/Elks Run/Potomac River, Rocky Marsh Run/Potomac River and Flowing Springs Run/Shenandoah River. Neither the Storm Water Pollution Prevention

Plan, nor the Ground Water Protection Plan describe the karst watershed accurately. The plans do not describe the complex realities of the watershed and are ineffective at protecting the waters of the state of West Virginia.

- DEP's Unilateral Order #9080 allowed the CoCT/CTUB to commence construction before Permit WVR109958's public comment period ended. However, no attempt was made by DEP to make Order #9080 public - no press release, no mention on WVDEP website, no legal notice. How could the public know about the Order and then appeal the Order as disingenuously offered by the DEP within the Order?

RAD'S Petition for Public Hearing - Ignored

- RAD made a request for public hearing related to this permit on 3/26/2020 (Attachment C) and was told by DEP General Counsel Wandling that our complaint would not be dealt with administratively (Attachment D). RAD reiterates this request.

For reasons stated above RAD objects to DEP granting NPDES Permit WVR109958 and requests a public hearing.

Best regards,
Jennifer King
Rural Agricultural Defenders, Chair

cc:

Karen Melvin, Director, Enforcement and Compliance Assurance Div. Region 3, EPA:
melvin.karen@epa.gov

Lisa Trakis, US EPA, Region III: trakis.lisa@epa.gov

Dana Aunkst, Director, Chesapeake Bay Program Office: aunkst.dana@epa.gov

Catherine Libertz, Director, Water Division Senior Management Lead for WRR:
libertz.catherine@epa.gov

Jeffrey Lapp, Chief Wetlands Branch, Water Division Management Lead for WRR:
lapp.jeffrey@epa.gov

Attachment A

County accepts bid for sinkhole mitigation

KEARNEYSVILLE —After a sinkhole opened up in the Burr Industrial Park in August, the Jefferson County engineering department and the county commission have accepted a bid by an engineering firm to mitigate the sinkhole. According to a report by GeoConcepts Engineering, a sinkhole opened up in the Burr Industrial Park and was mitigated in early [...]

By Adam Glasier
Mar 7, 2017



Submitted photo

A fenced-off area surrounding a sinkhole located near the West Virginia State Police Barracks on Industrial Boulevard. Jefferson County's engineering department has accepted a bid for remediation of the sinkhole.

KEARNEYSVILLE —After a sinkhole opened up in the Burr Industrial Park in August, the Jefferson County engineering department and the county commission have accepted a bid by an engineering firm to mitigate the sinkhole.

According to a report by GeoConcepts Engineering, a sinkhole opened up in the Burr Industrial Park and was mitigated in early August. However, a second sinkhole had opened near the first one, leading the county's chief engineer, Roger Goodwin, to propose the county hire a firm to investigate

and mitigate the second sinkhole.

“There was another sinkhole that was remediated with GeoConcepts, but then another one popped up,” Goodwin said. “We want to see if the sinkholes are interconnected. These sinkholes can be features of Karst geology, which we have in the area.”

Karst geology is a description for a naturally occurring phenomenon in which rain or groundwater seeps into limestone under the soil. The water forms caves and caverns underground when it comes in contact with the limestone, and those subterranean tunnels can collapse and form sinkholes, according to Goodwin.

In a presentation to the Jefferson County Commission, Goodwin said he had previously discussed finding out whether the Eastern Panhandle Conservation District would be able to provide funding for investigating and remediating the second sinkhole, which is located near the West Virginia State Police barracks on Industrial Boulevard in the Burr Industrial Park. He said the conservation district does not have the funding, but he suggested investigating and remediating the sinkhole anyway.

Goodwin said several bids were submitted for the remediation work: GeoConcepts’s bid in the amount of \$12,660; Kable Excavating’s bid of \$900 for excavation only and Allegheny Surveys Inc.’s bid of \$7,700 to prepare topographic maps and identify the drainage area surrounding the sinkhole; and Mountain Research LLC’s bid of \$13,000 for remediation work.

The county commission voted to award the bid to GeoConcepts. Goodwin said the West Virginia Department of Environmental Protection is looking to complete a survey of the sinkhole and surrounding area by June 1.

III

Staff writer Mary Stortstrom can be reached at 304-725-6581 or on Twitter @mstortstromJN.

Attachment B



U.S. Fish and Wildlife Service

National Wetlands Inventory

Wetlands



April 17, 2020

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland

- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond

- Lake
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Attachment C

March 26, 2020

Katheryn Emery, P.E.,
Acting Director,
Division Of Water And Waste Management- Environmental
Enforcement,
West Virginia Department of Environmental Protection
601 57th Street S.E.
Charleston, WV 25304
Katheryn.d.emery@wv.gov



**Re: Formal Complaint for WV NPDES WVR109958, WV NPDES Permit WV0115924,
and WVDEP's Unilateral Order 9080**

Dear Acting Director Emery,

We have been informed by Jefferson County Foundation (JCF) of several communications between JCF and WVDEP regarding the City of Charles Town's Individual Registration, WV NPDES WVR109958, to WV NPDES Construction Stormwater General Permit WV0115924, commencement of construction activities for said permit, and WVDEP's Unilateral Order 9080.

Please accept this formal complaint from RAD regarding the City of Charles Town's construction activities on the Rt. 9 sewer line project during the COVID-19 pandemic and to WVDEP's allowance and purposeful obstruction of public notice and participation for said construction activities for NPDES Permit WVR109958 / WV NPDES Permit WV0115924, and to WVDEP's Unilateral Order 9080.

We insist a Stop Work Order be immediately issued for all construction activities related to the "Route 9 Sewer Project" (WV NPDES Permit WVR10995, WV NPDES Permit WV0115924, and WVDEP's Unilateral Order 9080) until the permit is approved, public comment period is over, and released for the reasons listed hereafter.

Construction Commences Before Public Comment Period Ends for Permit

WVDEP issued a public notice for NPDES Permit WVR109958 on March 16, 2020 via email alert and published the notice in the Spirit of Jefferson on March 18, 2020. The public comment period is open from March 16, 2020 to April 17, 2020.

In addition to receiving JCF and WVDEP communications regarding commencement of construction for Permit WVR109958, I have personally witnessed and documented these construction activities.

It is disingenuous and cruel to offer the public the perception of having a voice and request comments, then allow for construction activities to commence before the public comment period is over.

All caution is being thrown to the wind so the City of Charles Town can build this line as quickly as possible. The project is roughly 6 miles long. At the rate they are feverishly working (past 5PM), no doubt it will be complete before the public comment period ends. Perhaps that was the goal of the City of Charles Town and the WVDEP.

RAD'S Objections to WVDEP's Unilateral Order 9080

WVDEP's Unilateral Order 9080 dated March 2, 2020 to the City of Charles Town lacks guidelines, policies, and procedures for public notice and participation.

RAD is forced to ask why put out public notice and give the perception the public has a voice when the WVDEP not only allows for these activities to occur but issues an Order which gives the green light to do so. And it is incredibly chilling that the WVDEP plans to use similar orders for other entities "caught between" 2012 & 2019 General Stormwater permits for the entire state.

This Order is a thinly veiled document devised to aid corporations and businesses to "get things done" and it circumvents, obstructs, suppresses, and extinguishes citizens' rights, interests, participation, and voices.

The public is tired of hearing confusing, misleading, and misdirecting reasons as to why the WVDEP is allowing for the current and past construction activities to occur that break their own rules and regulations. It has been a purposeful and constant "hot potato", "pass the buck", and finger pointing game between departments and personnel regarding which state permits these activities fall under. We assert that a large amount of construction activities have occurred without permits, guidelines, and protections at all. Therefore, we are filing this complaint against WVDEP's statewide Construction Stormwater General Permit, WV NPDES Permit WV0115924, as well for lack of and obstruction to public participation and for reasons stated herewith and assert the WVDEP has violated the rights of all West Virginia citizens.

Unnecessary Construction to Non-critical Infrastructure During COVID-19 Pandemic

RAD strongly objects to construction activities for this project during the COVID-19 pandemic. There are rules and laws for reasons. While we are sure these workers feel fortunate to have jobs and paychecks right now amid the COVID-19 pandemic and we know they work hard, their health and safety, as well as their families' health, are being put unnecessarily at risk to build a sewer line that only serves Rockwool, a non-essential manufacturer that is still in a construction phase and not operating yet.

This sewer line is non-critical infrastructure and we do not see where these construction activities would be categorized under as essential business according to Homeland Securities

"Guidance On The Essential Critical Infrastructure Workforce"

<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

This video was taken by me yesterday, March 25th.

https://drive.google.com/file/d/144Xt8Wrse2KnkFXeWxitm_boz_vGGDo6/view?usp=sharing

If you are unable to access the video in our shared Google Drive folder, we can provide it to you by your preferred digital transfer method. Please note these activities are occurring after Governor Justice's Executive Order #9-20 declaring all non-essential businesses shut down as of 8PM March 24, 2020, to reduce COVID-19 transmission. We assert these construction activities violate federal and state orders to reduce COVID-19 transmission.

We believe there are also erosion and other permit violations occurring as well, however, we will not comment on them at this time and plan to send these in the near future.

Due to the recent events and the total confusion of permitting, **we insist there be a public hearing for NPDES WVR109958** as soon as the COVID-19 gathering restrictions are lifted. The public deserves to have their voices heard and their questions clearly answered.

The recent events which were allowed and encouraged by the WVDEP are deeply disappointing and contradict the WVDEP's mission. The public is truly getting gagged and railroaded, yet again, by the WVDEP. The environment and citizens, the entities the WVDEP are supposed to be serving and protecting, are suffering and will continue to suffer from WVDEP's negligence and dereliction of duties.

Best regards,
Jennifer King
Rural Agricultural Defenders, Chair

cc:

Scott G. Mandirola, Deputy Secretary for External Affairs, WVDEP (via e-mail)

Harold D. Ward, Deputy Secretary for Operations, WVDEP (via e-mail)

Jeremy Bandy, Acting Deputy Director DWWM, WVDEP (via e-mail)

Yogesh Patel, Asst. Director, DWWM Permits (via e-mail)

Brad Wright, Assistant Chief Inspector, EE/WW (via e-mail)

David C. Simmons, Assistant Chief Inspector, EE (via e-mail)

Laura McGee, Environmental Resources Program Manager, EE (via e-mail)

John Hendley, Environmental Inspector Supervisor, EE/WW (via e-mail)

Shyrel Moellendick, MSSS, EE (via e-mail)

Lisa Trakis, US EPA, Region III (via e-mail)

Karen Melvin, Director, Enforcement and Compliance Assurance Div. Region 3, EPA (via e-mail)

Stephanie Grove, Jefferson County Administrator (via e-mail)

Attachment D

Eversweet Apiaries

From: "Wandling, Jason E" <Jason.E.Wandling@wv.gov>
Date: Friday, April 3, 2020 4:46 PM
To: <chair@radwv.org>
Cc: "Emery, Katheryn D" <Katheryn.D.Emery@wv.gov>; "Ward, Harold D" <Harold.D.Ward@wv.gov>; "Mandirola, Scott G" <Scott.G.Mandirola@wv.gov>; "Bandy, Jeremy W" <Jeremy.W.Bandy@wv.gov>; "Patel, Yogesh P" <Yogesh.P.Patel@wv.gov>; "Wright, Brad M" <Brad.M.Wright@wv.gov>; "Simmons, David C" <David.C.Simmons@wv.gov>; "McGee, Laura E" <Laura.E.McGee@wv.gov>; "Hendley, John H" <John.H.Hendley@wv.gov>; <trakis.lisa@epa.gov>; <Melvin.karen@epa.gov>; <sgrove@jeffersoncountywv.org>; <brogna.giuliana@gmail.com>; <susanrapril@comcast.net>
Subject: Response to RAD March 26, 2020 "Formal Complaint"

Dear Ms. King:

I am in receipt of your March 26, 2020 "Formal Complaint" regarding NPDES permits WVR109958 and WV0115924, as well as Unilateral Order 9080. Please allow this to serve as my response.

West Virginia law does not recognize a "Formal Complaint" as a vehicle to challenge permit registrations or unilateral orders. Instead, the Code provides for administrative appeals of permit issuances and unilateral orders. Your group filed such an appeal yesterday. That EQB appeal, *Rural Agricultural Defenders and Penny Shiley v. Emery*, is your vehicle to challenge agency actions with which you disagree.

Since you have filed an appeal to the EQB and this matter is now in formal litigation, the agency cannot speak to the matters raised in your "Formal Complaint." Instead, I look forward to meeting you at the evidentiary hearing in this matter. Please do not hesitate to contact me with questions or concerns, but please notify me immediately if you currently have legal representation or if your group hires an attorney for this case later, as the West Virginia ethics rules forbid me from communicating with an opposing party that is represented by an attorney.

Regards,

Jason

Jason Wandling
 General Counsel and Chief of Legal Services
 West Virginia Department of Environmental Protection
 601 57th St.
 Charleston, WV 25304

4/17/2020

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